# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
## BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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| In re Patent Application of: ) | **MAIL STOP APPEAL BRIEF - PATENTS** |
| ) | |
| Thomas J. HERDER ) | Group Art Unit:  2134 |
| ) | |
| Application No.:  09/627,558 ) | Examiner:  C. Brown |
| ) | |
| Filed:  July 28, 2000 ) | |
| ) | |
| For:  SECURE TRANSACTION CARD ) | |
|      USING BIO- METRICAL ) | |
|      VALIDATION ) | |

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## REPLY BRIEF UNDER 37 CFR § 41.41

This Reply Brief is submitted in response to the Examiner's Answer, dated September 20, 2007.

I.      <u>STATUS OF CLAIMS</u>

Claims 1-22 are pending in this application.  Contrary to the Examiner's assertion in the

Examiner's Answer, all claims 1-22 were rejected in the Office Action, dated October 11, 2006,

and are the subject of the present appeal.  The Examiner's indication at page 2 of the Examiner's

Answer that claim 9 stands objected to as being dependent upon a rejected based claim, but

would be allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims is considered to be withdrawal of the pending rejection of claim

9.  These claims are reproduced in the Claim Appendix of the Appeal Brief, filed March 28,

2007.

## II.    GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A.    Claims 1-3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM (U.S. Patent No. 6,185,316) in view of KANEVSKY et al. (U.S. Patent No. 5,897,616).

B.    Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM (U.S. Patent No. 6,185,316) in view of KANEVSKY et al. (U.S. Patent No. 5,897,616), and further in view of FUJIMOTO (U.S. Patent No. 5,893,057).

C.    Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM (U.S. Patent No. 6,185,316) in view of KANEVSKY et al. (U.S. Patent No. 5,897,616) and further in view of GLAZE (U.S. Patent No. 6,320,974).

D.    Claims 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM (U.S. Patent No. 6,185,316) in view of KANEVSKY et al. (U.S. Patent No. 5,897,616), and further in view SAWYER (U.S. Patent No. 6,324,271).

E.    Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM (U.S. Patent No. 6,185,316) in view of KANEVSKY et al. (U.S. Patent No. 5,897,616), further in view of SAWYER (U.S. Patent No. 6,324,271), and still further in view of FUJIMOTO (U.S. Patent No. 5,893,057).

F.    Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM (U.S. Patent No. 6,185,316) in view of SAWYER (U.S. Patent No. 6,324,271), further in view of CHMAYTELLI (U.S. Patent No. 6,542,729), and still further in view of WEISS (U.S. Patent No. 4,998,279).

G.    Claims 16-22 under 35 U.S.C. § 103(a) as being unpatentable over BUFFAM

(U.S. Patent No. 6,185,316) in view of KANEVSKY et al. (U.S. Patent No. 5,897,616), further in view of SAWYER (U.S. Patent No. 6,324,271), and further in view of WEISS (U.S. Patent No. 4,998,279).

III.     ARGUMENTS

In the "Response to Arguments" section of the Examiner's Answer (pp. 10-16), the Examiner presents arguments in addition to those presented in the "Grounds of Rejection" section of the Examiner's Answer and the Office Action, dated October 11, 2006. Although Appellant's arguments presented in the Appeal Brief, filed March 28, 2007, are applicable to these arguments, Appellant submits the following additional remarks.

A.      Claims 1-3 and 5.

With respect to claim 1, the Examiner acknowledges that BUFFAM does not teach biometric interrogation that includes querying the user for a biometric response associated with a randomly selected one of the plurality of questions and points to KANEVSKY et al. for allegedly teaching biometric responses given in reaction to a randomly selected plurality of questions (Examiner's Answer – pg. 10). The Examiner further alleges that KANEVSKY et al. has not been relied on for disclosing biometric authentication, but only for teaching "the method of querying the user is a random question." (Id.) Appellant respectfully submits that the Examiner has not addressed the merits of Appellant's arguments.

More specifically, Appellant notes that BUFFAM appears to disclose biometric interrogation of a received sample based on a profile. However, BUFFAM does not

disclose the biometric profile including a plurality of biometric samples received from the user, where the plurality of biometric samples correspond to a plurality of questions, as recited in claim 1. The Examiner acknowledges this deficiency in BUFFAM.

Appellant further submits that BUFFAM does not disclose or suggest biometrically interrogating the user, where the biometrical interrogation includes querying the user for a biometric response associated with a randomly selected one of the plurality of questions, and determining if the biometric response matches a biometric sample in the biometric profile corresponding to the randomly selected one of the plurality of questions, as recited in claim 1. The Examiner also acknowledged these deficiencies in BUFFAM.

To remedy these deficiencies, the Examiner alleges that a disclosure in KANEVSKY et al. of "random questions for authentication" is all that is required to remedy the above-noted deficiencies in BUFFAM. Appellant strenuously objects to this allegation. Claim 1 does not recite "random questions for authentication" or even the sole feature of the biometric profile including a plurality of biometric samples received from the user, where the plurality of biometric samples correspond to a plurality of questions. Rather, claim 1 requires that a user be interrogated using one of the plurality of questions used to populate the biometric profile and a determination regarding whether the received biometric response matches the biometric sample in the biometric profile corresponding to the randomly selected one of the plurality of questions. Thus, even if KANVESKY et al. can reasonably be construed as disclosing "random questions for

authentication", as alleged by the Examiner, this disclosure is not equivalent to the above-recited features of claim 1.

More specifically, the portions of KANEVSKY et al. cited by the Examiner (e.g., col. 3, lines 28-44) specifically disclose querying a user based on a random question and comparing the response "against <u>an acoustic model attributable to a the speaker candidate</u>." This acoustic model does not correspond to individual ones of the plurality of questions, as required by claim 1.

Col. 3, lines 28-44, of KANEVSKY et al., which is addressed in the Appeal Brief, does not disclose or suggest biometrically interrogating the user, where the biometrical interrogation includes querying the user for a biometric response associated with a randomly selected one of the plurality of questions, and determining if the biometric response matches a biometric sample in the biometric profile corresponding to the randomly selected one of the plurality of questions, as recited in claim 1 (see, for example, pp. 8 and 9 of the Appeal Brief).

For at least the reasons given above and for at least those reasons given in the Appeal Brief, Appellant respectfully requests that the rejection of claims 1-3 and 5 under 35 U.S.C. § 103(a) based on BUFFAM and KANEVSKY et al. is improper. Accordingly, Appellant requests that the rejection of claims 1-3 and 5 be reversed.

D.      Claims 8 and 10.

Similar to the rejection of claim 1, the Examiner continues to acknowledge that BUFFAM does not teach biometric interrogation that includes querying the user for a biometric response associated with a randomly selected one of the plurality of questions and points to KANEVSKY et al. for allegedly teaching biometric responses given in

reaction to a randomly selected plurality of questions (Examiner's Answer – pg. 12). The

Examiner further alleges that KANEVSKY et al. has not been relied on for disclosing

biometric authentication, but only for teaching "a query by means of a random question."

(Id.) Appellant respectfully submits that the Examiner has not addressed the merits of

Appellant's arguments.

As discussed above in relation to claim 1, Appellant notes that BUFFAM appears

to disclose biometric interrogation of a received sample based on a profile. However,

BUFFAM does not disclose the personalized profile including a plurality of voice

samples elicited from the user in response to a plurality of personalized questions directed

to the user, as recited in claim 8. The Examiner acknowledges this deficiency in

BUFFAM.

Appellant further submits that BUFFAM does not disclose or suggest querying the

user for a voice response to a question that is randomly selected from the plurality of

personalized questions and verifying if the voice response matches a <u>corresponding voice</u>

<u>sample</u> in the voice profile, as recited in claim 8. The Examiner also acknowledged these

deficiencies in BUFFAM.

To remedy these deficiencies, the Examiner alleges that a disclosure in

KANEVSKY et al. of "random questions for authentication" is all that is required to

remedy the above-noted deficiencies in BUFFAM. Appellant again strenuously objects

to this allegation. Claim 8 does not recite "random questions for authentication" or even

the sole feature of the personalized profile including a plurality of voice samples elicited

from the user in response to a plurality of personalized questions directed to the user.

Rather, claim 8 requires that a user be interrogated using one of the plurality of personalized questions used to populate the personalized profile and a determination regarding whether the received voice response <u>matches the corresponding voice sample in the personalized profile</u>. Thus, even if KANVESKY et al. can reasonably be construed as disclosing "random questions for authentication", as alleged by the Examiner, this disclosure is not equivalent to the above-recited features of claim 8.

More specifically, the portions of KANEVSKY et al. cited by the Examiner (e.g., col. 3, lines 28-44) specifically disclose querying a user based on a random question and comparing the response "against <u>an acoustic model attributable to a the speaker candidate</u>." This acoustic model does not correspond to individual ones of the plurality of voice samples elicited from the user in response to a plurality of personalized questions directed to the user, as required by claim 8.

The disclosure of SAWYER does not remedy the deficiencies of BUFFAM and KANEVSKY et al. For at least the reasons given above and for at least those reasons given in the Appeal Brief, Appellant respectfully requests that the rejection of claims 8-10 under 35 U.S.C. § 103(a) based on BUFFAM, KANEVSKY et al., and SAWYER is improper. Accordingly, Appellant requests that the rejection of claims 8 and 10 be reversed.


IV.     CONCLUSION

In view of the foregoing arguments, Appellant respectfully solicits the Honorable Board to reverse the Examiner's rejections of claims 1-8 and 10-22 under 35 U.S.C. § 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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